

House Bill 1027

By: Representatives Teilhet of the 40th, Porter of the 143rd, Benfield of the 85th, Oliver of the 83rd, Abrams of the 84th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 1 of Chapter 5 of Title 21 and Part 1 of Article 2 of Chapter 10 of Title 45 of the Official Code of Georgia Annotated, relating to general provisions for ethics in government and general provisions for conflicts of interest, respectively, so as to change provisions relating to membership on the State Ethics Commission; to provide the State Ethics Commission with jurisdiction to hear and investigate matters and issue orders relating to violations involving conflicts of interest; to provide for procedure; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 5 of Title 21 of the Official Code of Georgia Annotated, relating to general provisions for ethics in government, is amended by revising subsections (a) and (b) of Code Section 21-5-4, relating to the State Ethics Commission, as follows:

"(a) Those members serving on the State ~~Campaign and Financial Disclosure~~ Ethics Commission prior to ~~March 1, 1987~~ July 1, 2010, shall serve for a term of office which expires ~~March 1, 1987~~ July 1, 2010.

(b) There is created the State Ethics Commission, with such duties and powers as are set forth in this chapter. The commission shall ~~be a successor to the State Campaign and Financial Disclosure Commission in all matters pending before the State Campaign and Financial Disclosure Commission on March 1, 1987, and may continue to investigate, prosecute, and act upon all such matters pending before the State Ethics Commission.~~ The commission shall be governed by five members appointed ~~as follows: three members, not more than two of whom shall be from the same political party, shall be appointed by the Governor, two for terms of three years and one for a term of two years, one member shall be appointed by the Senate Committee on Assignments for a term of four years, and one member shall be appointed by the Speaker of the House of Representatives for a term of four years~~ by the Supreme Court of Georgia. Three members shall be from one political

party and two members shall be from a different political party. The Supreme Court shall designate one member to serve a two-year term; two members to serve three-year terms; and two members to serve four-year terms. The initial members shall take office on ~~March 2, 1987~~ July 2, 2010. Upon the expiration of a member's term of office, a new member, appointed in the same manner as the member whose term of office expired as provided in this subsection, shall become a member of the commission and shall serve for a term of four years and until such member's successor is duly appointed and qualified. If a vacancy occurs in the membership of the commission, a new member shall be appointed to the unexpired term of office by the state official or the committee that appointed the vacating member. Members of the commission shall not serve for more than one complete term of office; provided, however, that the members of the State Campaign and Financial Disclosure Ethics Commission serving on ~~March 1, 1987~~ July 1, 2010, shall be eligible for appointment as initial members of the State Ethics Commission."

SECTION 2.

Said article is further amended by revising subsection (a) of Code Section 21-5-6, relating to powers and duties of the State Ethics Commission, as follows:

"(a) The commission is vested with the following powers:

- (1) To meet at such times and places as it may deem necessary;
 - (2) To contract with other agencies, public or private, or persons as it deems necessary for the rendering and affording of such services, facilities, studies, and reports to the commission as will best assist it to carry out its duties and responsibilities;
 - (3) To cooperate with and secure the cooperation of every department, agency, or instrumentality in the state government or its political subdivisions in the furtherance of the purposes of this chapter;
 - (4) To employ an executive secretary and such additional staff as the commission deems necessary to carry out the powers delegated to the commission by this chapter and Code Section 45-10-29;
 - (5) To issue subpoenas to compel any person to appear, give sworn testimony, or produce documentary or other evidence;
 - (6) To institute and prosecute actions in the superior courts, in its own name, seeking to enjoin or restrain any violation or threatened violation of this chapter or Part 1 of Article 2 of Chapter 10 of Title 45;
 - (7) To adopt in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' such rules and regulations as are specifically authorized in this chapter;
- and

(8) To do any and all things necessary or convenient to enable it to perform wholly and adequately its duties and to exercise the powers specifically authorized to it in this chapter and Part 1 of Article 2 of Chapter 10 of Title 45."

SECTION 3.

Said article is further amended by revising subsection (b) of Code Section 21-5-6, relating to powers and duties of the State Ethics Commission, by striking "and" at the end of paragraph (21), by replacing the period with "; and" at the end of paragraph (22), and by adding a new paragraph to read as follows:

"(23) To investigate and issue orders relative to violations of Part 1 of Article 2 of Chapter 10 of Title 45 in conformance with the provisions of this chapter."

SECTION 4.

Part 1 of Article 2 of Chapter 10 of Title 45 of the Official Code of Georgia Annotated, relating to general provisions for conflicts of interest, is amended by adding a new Code section to read as follows:

"45-10-29.

(a) Upon a written complaint being filed with the State Ethics Commission alleging a violation of this part by a public official or employee, the State Ethics Commission shall conduct a preliminary investigation of the merits of such complaint provided that such complaint is verified under oath to the best information, knowledge, and belief by the person making such complaint. If there are found no reasonable grounds to believe that a violation of this part has occurred, the complaint shall be dismissed, subject to being reopened upon discovery of additional evidence or relevant material. If the State Ethics Commission determines that there are reasonable grounds to believe that a violation has occurred, it shall give notice by summoning the person believed to have committed the violation to a hearing. The hearing shall be conducted in all respects in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The State Ethics Commission may file a complaint charging violations of this part, and any person aggrieved by the final decision of the State Ethics Commission shall be entitled to judicial review in accordance with Chapter 13 of Title 50; provided, however, that nothing in this Code section shall be construed to limit or encumber the right of the State Ethics Commission to initiate on probable cause an investigation on its own cognizance as it deems necessary.

(b) In any preliminary investigation referenced in subsection (a) of this Code section, until such time as the State Ethics Commission determines that there are reasonable grounds to believe that a violation has occurred, it shall not be necessary to give the notice by

summons nor to conduct a hearing in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

(c) If such charges are found to be true as against an employee or any person appointed to a state office where in the conduct of such office the person so appointed has administrative and discretionary authority to receive and expend public funds and to perform certain functions concerning the public which are assigned to him or her by law, the Governor may forthwith remove such person from the appointed position or employment and the vacancy shall be filled as provided by law. If the charges are found to be true as against a member of the General Assembly, the provisions of Article III, Section IV, Paragraph VII of the Constitution shall control.

(d) The State Ethics Commission shall have the same powers and duties with respect to this part as it has with respect to Chapter 5 of Title 21.

(e) The Attorney General shall have the same powers and duties with respect to this part as the Attorney General has with respect to Chapter 5 of Title 21.

(f) The provisions of this Code section shall be in addition to or cumulative of any other criminal or civil penalties imposed by law. Notwithstanding any other provision of law to the contrary, an administrative or civil enforcement action brought pursuant to this part shall not bar the prosecution of any violation of the criminal law of this state."

SECTION 5.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 6.

All laws and parts of laws in conflict with this Act are repealed.